

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re:)
Application of)
BILTMORE FOREST RADIO FM, INC.)
ORION COMMUNICATIONS, LTD.)

For Construction Permit for a New)
FM Station In Biltmore Forest,)
North Carolina)

MM Docket No. 88-571

File No. BPH-950707MD

File No. BPH-870901ME

To: The Commission

BFBFM'S REPLY TO ORION'S OPPOSITION
TO
PETITION TO COMPLY WITH COURT ORDER

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July 6, 1998

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Summary

Orion's response to BFBFM's Petition was to attempt to discredit the evidence offered by Mr. Leeson generally, while offering contrary evidence to only a few "cherry-picked" elements of his story. This response is unavailing because Mr. Leeson's factual account must be accepted in the absence of a hearing discrediting his evidence. Moreover, Mr. Leeson's testimony is, if anything, bolstered by Mrs. Lee's numerous false declarations, as documented by contemporaneous materials. In addition, Mrs. Lee confirms or admits many of the facts cited by Leeson, thus establishing a solid basis for Orion's disqualification.

Orion also claims that the "ex parte" matters raised by BFBFM are res adjudicata, based on a comment by the Court in its March 2nd Order. The brief answer to that assertion is that the Commission had never considered, much less acted on, the ex parte allegations, so they could not possibly be res adjudicata. However, many of the facts presented by BFBFM with respect to the ex parte issue and the Lees' financial malfeasance were raised here for the first time. The Court could not have relied on facts which were unknown to it or the Commission in March.

Finally, Orion claims that the Commission may ignore the import of Orion I, the December 19th Order of the Court, and leave Orion on the air indefinitely. This interpretation of the Court's mandat would negate the entire basis of Orion I, which establishes Orion's right to be on the air at all. What is required is prompt action by the FCC to either (1) consider the equities between the

interim operators as previously required by the Court, or (2) award a permanent license after considering all the appropriate facts. The Commission has discretion to do either, but it may not do nothing.

Biltmore Forest Broadcasting FM, Inc. ("BFBFM"), by its attorneys, hereby replies to the Opposition filed June 17, 1998 by Orion Communications, Ltd. ("Orion") in the above-captioned matter. As will appear below, Orion in many respects concedes or does not dispute the host of rule violations cited by BFBFM in its original pleading. Instead, Orion has attempted to finesse the manifest lack of basic qualifications demonstrated by those facts by a variety of tried and true dodges. First it attempts to kill the messenger, Mr. Leeson, while offering no competent challenge to the facts averred. Second, it patently misreads the D.C. Circuit Court's March 2 Order as somehow resolving forever matters which have yet to be considered by the Commission and therefore could not possibly have been passed upon by the Court. Third, it ignores the many rule violations of which it is clearly guilty but for which it has no colorable excuse. As will be shown below, Orion's response is itself so patently false in key particulars as to raise new questions as to its basic qualifications.

I. The Attack on Mr. Leeson

A. Orion's attack on Clyde Leeson is a curious line of defense in several respects. While BFBFM was unaware of Mr. Leeson's long ago acquaintance with the criminal authorities, Orion obviously was fully aware of these facts when it retained Mr. Leeson to administer its financial affairs. As described by Mr. Leeson, he was approached by Mr. Lee to help Radio Asheville extricate itself from the financial disaster it had created for itself. Orion itself admits that Leeson served as a "financial advisor" to Radio Asheville, to the Lees and to Orion itself. In

this capacity, he dealt with the Lees' multitude of creditors, fended off tax authorities, hushed up uttering charges, settled claims and otherwise handled the trail of financial misconduct which the Lees left wherever they went. If Mr. Leeson is the con artist and hustler now described by the Lees, he was the perfect man for the job they had at hand and he served them well at that job for more than six years. If we judge a man by the company he keeps, how do we judge the Lees, who for years left Mr. Leeson in charge of their financial affairs, associated with him on a daily basis, heeded his advice, and endowed him with extraordinary powers to act in their behalf? (See, for example, the broad power of attorney which they granted him on January 4, 1994 - a power which remains unrevoked - to "arrange, negotiate, approve and sign agreements for Orion". Attachment to Ex. 1).

Indeed, since Mr. Leeson swears that Zeb Lee agreed to give him a 10 - 15% interest in Orion - an assertion that the Lees do not and cannot dispute - the record of criminal misconduct laid out by Orion in its Opposition constitutes the basis for yet another issue against Orion: whether an applicant whose future shareholder has the record of criminal misconduct cited by Orion is qualified to be a Commission licensee. In attempting to damn Mr. Leeson, Orion has damned its own right arm. What is truly amazing is that the pattern of financial fraud and deceit practiced by the Lees makes anything in Mr. Leeson's record pale by comparison. Leeson, a convicted mail fraud felon, was trying to get them on the straight and narrow; he was only fired when even his sense of

financial propriety was offended by the Lees' financial shenanigans.

B. Orion's defense fails in another respect as well. While roundly condemning Leeson as a perjurer, Mrs. Betty Lee's declaration is demonstrably false in virtually all of the instances where she ventures to assert an actual fact. For example, Mr. Leeson averred in his original declaration that he was terminated by the Lees in February, 1996 because he forcefully insisted that the diversion of funds which were rightfully the property of their factors was a serious offense and they were being accused of embezzlement on this basis. Mrs. Lee claims that he was let go because he tried to arrange a deal with Orion's competitors behind Orion's back. As reflected in Orion's own Exhibit 7, Mr. Leeson did not receive a letter from Skyland's principal, Mr. Ferguson, until March, 1996 and he did not contact the Lees about the matter until April or May, 1996. Yet he was fired on February 2, 1996. (See attached contemporaneous correspondence signed by Mrs. Lee herself and Zeb Lee.) Mrs. Lee's current account of the reason for Leeson's firing is a sheer fabrication and a clumsy one at that since it could so easily be exposed.^{1/}

Similarly, Orion now claims that Mr. and Mrs. Robertson, the original undisclosed pledges of stock in Orion, were paid off and their liens released before another undisclosed stock pledge

^{1/} The February, 1996 correspondence also makes clear that Leeson worked with the Lees for six years. Mrs. Leeson's claim that Leeson began working with them only in 1991 is therefore belied by her own letter.

was made to a Mr. Al Ritchie. (Orion Opp. at 10-11 and Betty Lee Declaration) In fact, Mr. Leeson personally saw checks being paid to the Robertsons on their note well after Mr. Ritchie's pledge was made. (See Ex. 1, Leeson Declaration) That fact can easily be established from the Lees' checkbook or by inquiry of the Robertsons. Again, Mrs. Lee's declaration is calculatedly false.

Mrs. Lee insists that Mr. Leeson approached the Lees in 1991 to work at below minimum wage to help them out of their difficulties. Not only is this claim nonsensical on its face, but Mrs. Lee was not even present at the meetings between Mr. Leeson and her husband at which Mr. Lee sought Mr. Leeson's help and advice. She thus has no basis whatsoever to contest his account of what occurred. Mr. Lee, of course, knows exactly what happened, and he has remained silent.

Mrs. Lee further claims that the Lees were never accused of fraud in connection with their diversion of the funds which they were required to pay over to Mrs. Slattery and Mr. and Mrs. Horton, and that these debts were paid off in the ordinary course. In fact, the attached documents contain an admission by Mr. Lee himself that the funds due to the Hortons had been collected by Orion but not paid over. Mr. Horton's draft complaint alleging fraud and embezzlement is also attached (Attachments to Exhibit 1). Moreover, Mrs. Slattery, who apparently did not threaten Orion with a law suit, has still not been paid her debt. Mrs. Lee's declaration is therefore false once again.

Mrs. Lee also suggests that Orion is not financially

unqualified, the "proof of the pudding" being in the fact that Orion has "successfully broadcast" for the past four years. We need only refer Mrs. Lee to her husband's plaintive appeal to hapless members of the public for financial support: "For the last ten years I have been forced to spend practically everything I have fighting off legal challenges...I'm reaching the bottom of my financial barrel." (See Exhibit 10 to original BFBFM Petition) The people to whom Mr. Lee directed this plea were not advised that they had been operating the station "successfully" for the last four years; in fact, they were led to believe exactly the contrary. Was Mr. Lee deceiving them (and thus engaging in the very kind of mail fraud for which Orion so sanctimoniously condemns Mr. Leeson) or is his wife deceiving the Commission now?

Mrs. Lee now must assume the unenviable position of having been exposed as a worse liar than a convicted perjurer. Orion's basic qualifications are therefore doubly implicated by her substantive offenses and her chronic inability to tell the truth.

C. Perhaps more compelling than Mrs. Lee's numerous prevarications is the fact that she does not dispute the most significant elements of Mr. Leeson's story. Mr. Leeson was promised an interest in Orion by Mr. Lee. Mr. Lee, who is obviously in a position to confirm or deny the facts, has chosen to keep silent, as has his wife. Mr. and Mrs. Lee also chose not to question Mr. Leeson's flat assertion that Mr. Lee expressed a willingness to sign a contract with a broker to sell the FM station several years ago, a fact which utterly discredits the basis on

which their comparative preference in this case was originally awarded. Mrs. Lee shrugs off the Lees' pattern of financial malfeasance, including betrayal of a public trust by conversion of employee withholding taxes, as not being Orion's responsibility because some of it was done under the Radio Asheville aegis. What Orion fails to appreciate is that character defects follow the character; they are not purged away by formation of a new corporate shell. Finally, neither Mr. nor Mrs. Lee contest Mr. Leeson's assertion that he was personally present when they solicited the assistance of a U.S. senator to get the FCC's decision reversed.

Presumably because Mr. Lee could not perjure himself on these points, Orion has taken the tack of attempting to discredit Mr. Leeson's account without presenting any countervailing evidence. While their tactic is transparent, it is wholly contrary to law. Mr. Leeson's background must certainly be weighed in any proceeding in which his credibility is in issue, but the mere fact that he was convicted of making a false declaration under oath 16 years ago is not a basis to reject his unchallenged account of grave offenses by the Lees. See Bassil v. United States, 517 A.2d 714 (D.C. 1986) (evidence of a witness' bad reputation for truth and veracity was held to be inadmissible due to constitutional right to confront witnesses and present a defense); Kitchen v. United States, 95 U.S. App.D.C. 277, 221 F.2d 832 (1955) ("[q]uestions upon collateral issues for impeachment purposes are permissible if the subject matter of the questions bears directly upon the veracity of the witness in respect to the issue involved

in the trial").

At a minimum, Mr. Leeson's declarations - supported in some cases by documents and confirmed in some cases by Mrs. Lee - present a compelling factual predicate which requires the Commission to hold a hearing to determine the truth of the matters. United States v. FCC, 44 RR 2d 59, 84 (D.C. Cir. 1978); Citizens Committee to Save WEFM v. FCC, 506 F.2d 246 (D.C. Cir. 1974). For if Mr. Leeson is correct - and all evidence submitted to date suggests that he is - the Lees should be permanently disqualified from holding a broadcast license.

Quite apart from the matters which Orion does not bother to dispute, it positively admits a series of other violations cited in the original BFBFM petition. Mrs. Lee concedes, for example, that Orion entered into at least two stock pledges in 1994. Both of these pledges were categorically required to be filed with the Commission by Section 73.3613 of the Commission's rules. Their lawyer told them that these documents had to be filed and would be scrutinized by their competitors. The Lees nevertheless did not file these documents, thus shielding themselves from financial scrutiny. Mrs. Lee also acknowledges that the Lees calculatedly remained on the air last June, despite the expiration of their operating authority and despite a clear order from the Commission to cease operations immediately. Their cavalier admission of these offenses with a "who cares?" shrug reflects their general attitude toward compliance with regulations and laws.

II. None of the Matters Raised by BFBFM's Petition Are Res Judicata

Orion offers no substantive response to the undisputed factual situation surrounding its violation of the Commission's ex parte rules. Rather, it claims that the Orion II decision^{2/} termed the ex parte matters raised in an appeal of the Commission's January 16, 1998 Order "frivolous" and thus resolved the matter. Orion's contention in this regard grossly misapprehends the nature of the doctrine of res judicata.

Initially, we note that the Court did not have any of the facts which have been newly presented to the Commission in BFBFM's Petition, most especially including the critical new evidence that directly establishes that the Lees personally solicited intervention by their senator. Similarly, the Court was unaware of the new information about additional tax defaults, failures to pay withholding taxes, and numerous other financial derelictions which were presented for the first time in Mr. Leeson's declaration. Obviously, the Court's statement cannot constitute res judicata as to factual matters which were never before it and of which it was wholly unaware. In FTC v. Raladam Co., 316 U.S. 149 (1942), the Supreme Court ruled that when new facts are presented, an administrative agency may prosecute a company a second time for continuing the same practices. In Raladam, lower courts had set aside a cease and desist order issued by the FTC in 1929 when the FTC had determined that the company had used unfair methods of competition. A few years later, in 1935, the FTC instituted a new

^{2/} Biltmore Forest Radio, Inc. v. FCC, No. 98-1026 (D.C. Cir.), released March 2, 1998 ("Orion II").

proceeding on the same grounds, this time making the required finding of injury to competitors. The Supreme Court held that the first determination by the FTC was not *res judicata* because "the reasons for refusing to enforce the Commission's order are grounded upon the inadequacy of the findings and proof, as revealed in the particular record then before this Court." Id. The Court further stated that the reasons for refusing to enforce the order arose out of different proceedings and "presented different facts and a different record for our consideration." Id. at 150-51. See Brougham v. Blanton Mfg. Co., 249 U.S. 495 (1919) (agency's approval of a trademark was not binding when the percentages of ingredients in the product was changed).

Secondly, neither the ex parte issues nor the new financial issues have ever been acted upon by the Commission. Since the Court of Appeals is not a trier of fact de novo, it would be impossible for the Court to have somehow resolved factual issues in the first instance which had not been previously dealt with by a court or administrative agency. For example, when the Commission last assessed Orion's financial qualifications, it was unaware that the Lees owed a \$69,000 tax debt; in fact, the Lees led the Commission in 1994 to believe that all of their tax problems had been resolved by the sale of the AM station. (Mrs. Lee's admission that the tax debt was later somehow compromised down to \$2,500 begs the issue that the liability itself was previously concealed.) The Commission and the Court were also unaware of numerous other obligations disclosed for the first time by Mr. Leeson, such as the

\$60,000 debt to a former employee, the \$89,000 debt to a former law firm, the debts to numerous individuals which have not yet been reduced to judgements, the failure to pay over factored proceeds, the conversion of tax funds held in trust for the United States, etc. etc. None of these facts were known to the Commission or the Court; this is why it was essential that they be brought to the Commission's attention in the present context. In any event, neither the Court nor the Commission could be held to have ruled on those matters before they were even aware of them.

Third, the Court's March 2, 1998 order is presently on appeal to the Supreme Court. Even if there were any other rational basis to find res judicata, it would be unwise to base any resolution of this matter on an order which is not final and remains subject to reversal. International Tel. & Tel Corp. v. General Tel. and Elec. Corp., 527 F.2d 1162 (4th Cir. 1975).

III. The Need For Immediate Commission Action

Orion takes the view that the Court's Orion II Order gives the Commission unbridled discretion to do, essentially, nothing, i.e., to leave Orion on the air as the interim operator indefinitely and without regard to the rules of law enunciated by the Court in Orion I^{3/}. This cannot possibly be a correct interpretation of that Order. In Orion I the Court said that it was ordering expedited action to select a permanent licensee in part because the 1996 Telecom Act authorized the use of auctions

^{3/} Orion Communications, Ltd. v. FCC, 131 F.3d 176 (D.C. Cir. 1997) ("Orion I").

and the Court expected the Commission to adopt a Report and Order in that regard in January, a representation for which it took the Commission at its word. The Court, under the misimpression that the Commission was going to be adopting rules almost immediately, specifically left it to the Commission to either choose an interim or a final licensee. The Court devoted the majority of its opinion in Orion I to excoriating the Commission for putting an interim operator on the air without considering the equities applicable to the other potential interim operator. That being the case, the Court cannot have intended that the Commission simply put Orion on the air indefinitely without considering the very equities which it was criticized for not considering in the first place. Such an interpretation would render the entire rationale of Orion I meaningless because it would mean that no consideration of the equities need take place in determining an interim operator - the very opposite of what Orion I so clearly stands for and affirmatively asserts.

The only sensible way to reconcile Orion I and Orion II is to conclude that the Commission has discretion to either choose a permanent licensee promptly (as anticipated by the Court when Orion I was issued) or to select a new interim operator in accordance with the principles laid out in Orion I. BFBFM subscribes fully to this construction. We would be happy to have the Commission promptly adopt rules to award a permanent license and then apply those rules immediately. What is intolerable - and clearly at odds with Orion I - is to simply leave Orion on the air

and do nothing.

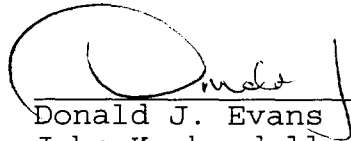
IV. Conclusion

For the reasons set forth above, BFBFM respectfully requests that the Commission take immediate action to either select a permanent licensee, follow the procedures prescribed by the Court in Orion I, or disqualify Orion on the basis of its ex parte and other abuses. If the equities in this case are fairly examined, BFBFM is confident that Orion will not only be disfavored as an interim applicant but must be permanently disqualified as a licensee.

Respectfully submitted,

Biltmore Forest Broadcasting
FM, Inc.

By:


Donald J. Evans
John Kuykendall
Its Attorneys

Evans & Sill, P.C.
919 18th Street, N.W., #700
Washington, D.C. 20006
(202) 293-0700

July 6, 1998

DECLARATION OF CLYDE LEESON

I, Clyde Leeson, hereby declare under penalty of perjury as follows:

1. I have read the June 17, 1998 Declaration of Betty Lee submitted in the pending Biltmore Forest proceeding at the FCC and the associated Orion pleading.

2. Orion indicates that the debt owed to Mr. and Mrs. Donald Robertson was paid off and the stock pledge held by them was released prior to a conflicting pledge being given to Mr. Al Ritchie. This is not true. In fact, the Ritchie loan was not made "late in 1994" as averred by Mrs. Lee. There were two Ritchie loans. One was made on May 11, 1994 and was secured by Betty Lee's pledge of her thirty shares of stock. The Ritchie stock pledge itself (previously submitted by Biltmore Forest Broadcasting FM, Inc.) indicates on page one in Betty Lee's own handwriting that the loan was made on May 11, 1994. The second Ritchie loan was made in November, 1994 and the November 28, 1994 stock pledge references on page 5-6 the earlier loan and pledge. The November 28 pledge also indicates that the proceeds of the Ritchie loan were to be used to acquire radio equipment - not to pay off an earlier note. Moreover, I personally observed checks being paid to the Robertsons on their debt well after the 1994 period in which Mrs. Lee stated that the debt had been fully paid. There should be checks in the Orion records which I have personally seen which would confirm this.

3. Mrs. Lee declares that the Lees severed their relationship with me because of my presentation of a proposed settlement with the other Biltmore Forest applicants. As the attached documentation and correspondence between me and the Lees plainly indicates, they terminated me on February 2, 1996 because of my insistence that they were misusing funds which should have gone to the factors who had paid them for their receivables. There was not the slightest indication that the termination had anything to do with a settlement proposal. In fact Zeb Lee had actually asked me early in 1996 to see if I could contact the other applicants and see about a way to settle the case since he was tired of litigating it. Moreover, I did not have any contact with Mr. Ferguson regarding the structure of a settlement proposal until late February or March, 1996 (as corroborated by Mr. Ferguson's letter to me in the Orion pleading) and I did not present any actual proposal until around May. Again, Mrs. Lee's account of why I was terminated is simply false.

4. Mrs. Lee also indicates that I approached the Lees to help them out of their financial difficulties in 1991. Again, this is false. I was called to Zeb Lee's office in 1989 at his request,

where he implored me to help him with his financial problems. I was promised a small stipend of \$250 a week, which was almost never paid. Only later did he promise me an interest in the FM station. Mrs. Lee offers no explanation of why I would volunteer to work at less than minimum wage at my own request to help her family out. It just doesn't make sense. Mrs. Lee was not present at the initial meeting with Mr. Lee, so of course she does not know personally what happened.

5. Mrs. Lee acknowledges that Orion gave stock pledges to the Robertsons and Mr. Ritchie. Orion's FCC counsel specifically advised them that these stock pledges would have to be filed with the FCC and that they would be subject to scrutiny by the other applicants.

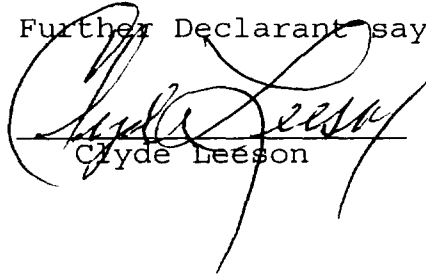
6. Having reviewed Mrs. Lee's declaration and the associated materials, I now recall that the incident with the banker, Mr. John Evans, which I described in my September 29, 1997 declaration, occurred in 1992, not 1994 as I originally indicated. The encounter happened on a Friday afternoon just before Mr. Evans was going on vacation, just as I described it. There was some urgency because Mr. Mullin had told me that I needed to get the bank letter immediately to respond to allegations that had been raised in the FCC case. I regret the error in date.

7. Orion seems to be questioning my abilities as a businessman and as a man worthy of trust. In that regard I can only say that I managed their financial affairs, keeping them numerous times from foreclosure, public humiliation and perhaps even jail without ever a single complaint from them during my six years of service. In fact, the Lees gave me a power of attorney (attached) to negotiate loans for them, charging me with using the utmost integrity in the matter. This power of attorney has never been revoked.

8. Mrs. Lee further avers that no one ever accused Orion of embezzlement in connection with Orion's debts to Mrs. Slattery and the Hortons (the factors who advanced Orion money against its future accounts receivable) and that the debts were "paid down and retired in the course of business." Attached hereto is a copy of a letter from Mr. Horton to Zeb Lee indicating that the funds had not been duly paid, an acknowledgement by the Lees that they had received the funds but failed to pay them over, and a copy of a draft complaint which Mr. Horton prepared to file to enforce his right to the funds. The complaint accuses Orion of perpetrating a fraud and engaging in embezzlement, which is what I had warned the Lees about. Only the threat of this suit convinced the Lees to pay Mr. Horton the funds that were due him. The debt was not in any sense paid in the ordinary course of business. In addition, as of June 26, 1998, Mrs. Slattery advised me that a portion of her debt had still not been repaid.

9. The \$5,000 debt of Betty Lee to First Union Bank which I referred to in my earlier declaration was actually a \$5,000 credit card charge on a First Union bank card. Mrs. Lee had incurred the debt, had failed to pay it, and the bank was calling threatening suit just before I left the Lees' service. I now am not sure that this was ever reduced to a judgment. There was another judgment against Mrs. Lee for \$5,000 which had been obtained by a Mr. Wates Whittaker in 1993.

Further Declarant sayeth not.


Clyde Leeson

7-2-98
Date

February 16, 1996

Mr. Clyde J. Leeson
90 Avondale Heights
Asheville NC 28803

Dear Clyde:

Thank you for your letter of February 14, 1996, and for your mailing postmarked February 7th.

I am very surprised that you took what I said on February 2nd as being "fired." I felt we should use every bit of money that we possibly could right at this time to pay Shelby and Mrs. Slattery. And, I really thought we could work together on as "as needed" basis to our mutual benefit. Clyde, all of us truly appreciate your help over many difficult and trying times and are sorry, if you believe otherwise.

As stated in paragraph #4 of your letter.... "you will have no further interest regarding Orion or the Lee family...." etc. Again let me say, I am sorry you feel that way. I have interest in you and the Leeson family, and would do anything I possibly could for you and yours.

I have always told you I intend to pay every penny I owe. This I will do as quickly as possibly.

Regarding paragraph #5 -- your letter: Enclosed are Barry's figures on the balance owed Mrs. Slattery on the factoring. Please check your figures to see if they match and we'll have a check for you just as quickly as possible.

Paragraph #6 -- your letter: Our totals on notes and interest are as follows:

Note assigned to Mrs. Slattery - 1995 total	\$15,635.00	1996 total	\$16,573.10 @ 6%
Note assigned to Mr. Horton - 1995 total	4,750.00	1996 total	5,035.00 @ 6%

Please check and let us know if they are in agreement with yours.

If you will let me know the amount of the phone call you made to Frank Mullin, I'll add it to the list of charges and pay. We will start immediately to pay you, Mrs. Slattery and Mr. and Mrs. Horton ... and others, what we owe. However, every effort will be made to clear these up sooner. If you think of or know of any others, I would appreciate it, if you would let me

know.

I have tried several times to get in touch with you. Again allow me to say, I am sorry you feel the way you do. After 6 years, I feel very strongly for you and Dot and would never do anything to hurt you.

Sincerely,



Zeb Lee

Clyde:

I also feel I helped you. I always took your dictation; writing whatever you wanted and to whomever you wanted me to. I always stopped whatever I was doing to help you in this way on any of your personal projects, making the stations resources readily available to you. I too, would like to think my efforts were of help to you.



Betty

Enclosures

I, OTTO W. DeBRUHL, REGISTER OF DEEDS OF BUNCOMBE COUNTY,
NORTH CAROLINA, DO HEREBY CERTIFY THIS TO BE A TRUE AND

ACCURATE COPY, AS RECORDED IN BOOK 1779 AT PAGE 590

WITNESS MY HAND AND OFFICIAL SEAL THIS THE 24 DAY OF

September

1997

Otto W. DeBruhl
REGISTER OF DEEDS

By Nancy Suddruth - deputy

BK 1779 PG 590

REGISTERED

'94 JAN -4 P1:53

POWER OF ATTORNEY

This Power of Attorney, given this the fourth day of
January, 1994, to Clyde Leeson, by Resolution of Orion
Communications, Limited to act on Orion's behalf to obtain a
loan. Clyde Leeson has the authority to arrange, negotiate,
approve and sign agreements and commitments for Orion
Communications, Limited under the following terms and conditions:

1. Any loan made to Orion Communications, Limited will be in accordance with the terms and conditions of Federal Communications Commission which granted the Construction Permit to Orion Communications in 1993.
2. Clyde Leeson will make the financial decision based on the loan to protect Orion Communication's best interest in terms of interest and pay-back on any loan made to Orion Communications.
3. Clyde Leeson will use the utmost integrity in investigating the lenders and their business reputation for fair dealing.
4. This Power of Attorney will exist until cancelled in writing by Orion Communications, Limited.



Zebulon C. Lee
ORION COMMUNICATIONS, LIMITED
By: Zebulon C. Lee

Ref. Clyde Leeson
By 2020
Oct. 11
2802
410 WSKY

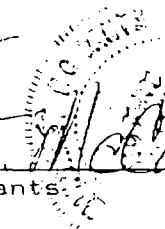
STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

This is to certify that on the 4th day of January 1994
Mr. Zebulon Lee personally appeared before me and affixed his
signature in my presents to the Power of Attorney listed above.

My commission expires

Feb 6, 1996

(SEAL)


Margaret T. McCants
Margaret T. McCants
Notary Public

Each of the foregoing certificates, namely of

Margaret T. McCants

a notary or Notaries public of the State and County designated is hereby certified to be correct.

Filed for registration on this the 4 day of January, 1994 at 1:53 p.m.

Otto W. DeBruhl
OTTO W. DeBRUHL
Register of Deeds, Buncombe County

Jerry W. Davis
By: ~~xxxx~~/Deputy/Register of Deeds

LAW OFFICES
HORTON & HORTON, P.A.

Suite 1407 B B & T Building
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Asheville, North Carolina 28801

SHELBY E. HORTON

AUDREY S. HORTON

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June 14, 1996

Mr. Zeb Lee
c/o Orion Communications Ltd., Inc.
P. O. Box 2020
Asheville, NC 28802

Dear Zeb:

This is a distasteful letter for me to write, but I have come to the conclusion that Audrey and I made a serious mistake when we agreed with Clyde Leeson to factor the accounts receivable of Orion Communications Limited, Inc. on November 3, 1994. As you know, it seemed that everything was going according to schedule while Clyde Leeson had some control over the everyday operation of Orion Communications Limited, Inc. and that is the reason that Audrey and I agreed to factor the accounts receivable.

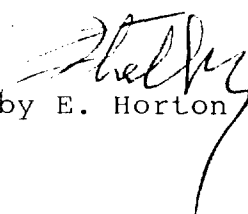
Needless to say, according to the agreement the money that Orion Communications Limited, Inc. has collected belonged to Audrey and me and there is no other way to put it but that we have not received it.

I think that we have been patient enough with you and tried to work with you to help you solve your financial problems at your time of need and you have continuously told me that you would forward me a check which you have not done.

The agreement that we entered into has not been lived up to and we have lost money by being patient and waiting to be paid. This is to advise you we will wait no longer. If we do not hear from you by return mail (with your check enclosed) you can be assured that we intend to take the necessary steps to collect the balance due us.

Sincerely,

HORTON & HORTON, P.A.


Shelby E. Horton

SEH/sl

cc: Clyde Leeson

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.

SHELBY E. HORTON and
AUDREY S. HORTON,
Plaintiffs.

vs.

FRAUD AND EMBEZZLEMENT

ZEBULON C. LEE, ORION
COMMUNICATIONS LIMITED, INC.
and CLYDE J. LEESON, individually,
Defendants.

NOW COMES the Plaintiff in the above entitled action and
alleges and says:

1. That Plaintiffs are residents of Buncombe County, North Carolina.
2. On information and belief Zebulon C. Lee is a resident of Buncombe County, North Carolina.
3. That Orion Communications Limited, Inc. is a North Carolina Corporation trading and doing business as WZLS in Asheville, North Carolina.
4. That on November 1, 1994 the parties entered into a written agreement, said agreement entitled Factor Agreement was made by Orion Communications Limited by its President, Zebulon C. Lee and approved by Betty W. Lee.
5. That the Factor Agreement is attached to and made a part of this complaint as evidence of a contractual agreement.
6. That on November 3, 1994 a check was issued to Orion Communications Limited, Inc. in the amount of \$33,250.00 and on November 4, 1994 a check in the amount of \$6,441.00 said checks drawn on the BB&T Bank, Asheville, North Carolina to Orion Communications Limited, Inc.
7. That according to the terms and conditions of the signed agreement Orion Communications Limited, Inc. was to turn over monies from the accounts receivables as received to the account of Shelby E. Horton.
8. That up until October 3, 1995 payments were made according to the agreement leaving a balance of \$17,163.43.

9. That on information and belief Orion Communications Limited, Inc. has collected the accounts receivables owing to Shelby E. Horton in the amount of \$17,163.43 and refuses to honor the said agreement entered into on November 1, 1994.

10. That Plaintiffs allege that Orion Communications has perpetrated a fraud and has embezzled funds belonging to Shelby E. Horton and converted same to their own use with disregard to the written contract.

WHEREFORE, Plaintiff's demand judgment in the amount of \$17,163.43 plus interest at 15% from October 3, 1995 to present.

Plaintiffs ask for trial by jury.

So sayeth.

HORTON & HORTON, P.A.

Shelby E. Horton
1407 BB&T Building
Asheville, NC 28801
704/253-0461

This is to verify that a true copy of the complaint was mailed to the Defendants by United States Mail this the first day of December, 1995.

Shelby E. Horton

AGREEMENT

This Agreement, made the First day of February 1996, by Orion Communications, Limited, trading and doing business as WZLS. Orion Communications entered into a factoring agreement with Shelby and Audrey Horton on November 4, 1994, and has a balance owed of \$11,903.43 and Orion Communications, Limited admits that said funds have been collecting and still owing and agrees to pay the \$11,903.43 in three (3) equal payments on or before April 15th unless agreed upon by the principals in writing. Orion Communication agrees that any default in this agreement they will waive their rights of protest based on the Factoring Agreement entered into November 4, 1994.

It is understood and agreed that if any further action is needed, Orion agrees to pay any legal fees involving the collection of said Factoring Agreement.


ORION COMMUNICATIONS, LIMITED

By: Zeb Lee

2/23-96 - pd. \$3967.81
4/17/96 - pd 3967.81

Certificate of Service

I, Sherry L. Schunemann, do hereby certify that a copy of the foregoing "BFBFM's Reply to Orion's Opposition to Petition to Comply With Court Order" was mailed by First Class U.S. Mail, postage prepaid, this 6th day of July, 1998, to the following:

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Associate General Counsel
Federal Communications Commission
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Sherry L. Schunemann